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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 vs.

12 SCOTT DEAN BROWN,

13 Defendant.

14) CR-06-0044-WFN
15) Plea Agreement

16 Plaintiff, United States of America, by and through James A. McDevitt,
17 United States Attorney for the Eastern District of Washington, and Stephanie J.
18 Lister, Assistant United States Attorney for the Eastern District of Washington,
19 and Defendant SCOTT DEAN BROWN and the Defendant's counsel, Bevan
20 Maxey, agree to the following Plea Agreement:

21 1. Guilty Plea and Maximum Statutory Penalties:

22 The Defendant, SCOTT DEAN BROWN, agrees to plead guilty to Count 3
23 of the Indictment filed on May 9, 2006, charging the Defendant with
24 Transportation of Child Pornography, in violation of 18 U.S.C. § 2252(a)(1).

25 The Defendant, SCOTT DEAN BROWN, understands that the charge
26 contained in the Indictment is a Class (B) felony charge. The Defendant, SCOTT
27 DEAN BROWN, also understands that the maximum statutory penalty for
28 Production of Child Pornography, in violation of 18 U.S.C. § 2252(a)(1), is not

Plea Agreement- 1

P70508JM.SLA.wpd

1 less than 5 years nor more than 20 years imprisonment; a fine not to exceed
2 \$250,000; a term of supervised release of up to life; and a \$100 special penalty
3 assessment.

4 The Defendant, SCOTT DEAN BROWN, understands that a violation of a
5 condition of supervised release carries an additional penalty of re-imprisonment
6 for all or part of the term of supervised release without credit for time previously
7 served on post-release supervision.

8 2. Agreement Pursuant to Fed. R. Crim. P. 11(c)(1)©:

9 The Defendant understands that this is a Plea Agreement pursuant to Fed. R.
10 Crim. P. 11(c)(1)©. The United States and Defendant agree that a sentence of
11 twenty (20) years should be imposed. Pursuant to Fed. R. Crim. P. 11(c)(1)©, the
12 United States may withdraw from this Plea Agreement if the Court imposes a
13 lesser sentence than agreed upon. The Defendant further understands that the
14 Defendant will have the option to withdraw from this Plea Agreement if the Court
15 imposes a sentence harsher than agreed upon.

16 3. Waiver of Constitutional Rights:

17 The Defendant, SCOTT DEAN BROWN, understands that by entering this
18 plea of guilty the Defendant is knowingly and voluntarily waiving certain
19 constitutional rights, including:

- 20 (a). The right to a jury trial;
- 21 (b). The right to see, hear and question the witnesses;
- 22 ©. The right to remain silent at trial;
- 23 (d). The right to testify at trial; and
- 24 (e). The right to compel witnesses to testify.

25 While the Defendant is waiving certain constitutional rights, the Defendant
26 understands the Defendant retains the right to be assisted through the sentencing
27 and any direct appeal of the conviction and sentence by an attorney, who will be
28 appointed at no cost if the Defendant cannot afford to hire an attorney. The

1 Defendant also acknowledges that any pretrial motions currently pending before
2 the Court are waived.

3 4. Elements of the Offense:

4 The United States and the Defendant agree that in order to convict the
5 Defendant of Transportation of Child Pornography, in violation of 18 U.S.C. §
6 2252(a)(2), the United States would have to prove beyond a reasonable doubt the
7 following elements:

- 8 (a). First, on or about between March 2005 through July 3, 2005,
9 in the Eastern District of Washington, the Defendant, SCOTT
10 DEAN BROWN knowingly transported a visual depiction in
11 interstate commerce by any means, including a computer; and
- 12 (b). Second, that the production of such visual depiction involved
13 the use of a minor engaging in sexually explicit conduct, as
14 defined by 18 U.S.C. § 2256; and
- 15 (c). Third, that such visual depiction was of a minor engaged in
16 sexually explicit conduct; and
- 17 (d). Fourth, that the defendant knew that such visual depiction was
18 of sexually explicit conduct; and
- 19 (e). Fifth, the defendant knew that at least one of the persons
20 engaged in sexually explicit conduct in such visual depiction
21 was a minor.

22 5. Factual Basis and Statement of Facts:

23 The United States and the Defendant stipulate and agree that the following
24 facts are accurate; that the United States could prove these facts beyond a
25 reasonable doubt at trial; and these facts constitute an adequate factual basis for
26 SCOTT DEAN BROWN's guilty plea. This statement of facts does not preclude
27 either party from presenting and arguing, for sentencing purposes, additional facts
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1 which are relevant to the guideline computation or sentencing, unless otherwise
2 prohibited in this agreement.

3 On April 24, 2006, Special Agent Marcus Munn of Immigration and
4 Customs Enforcement (ICE) was contacted by the Okanogan County Sheriff's
5 Office requesting forensic assistance with an on-going child abuse investigation
6 regarding SCOTT DEAN BROWN. S/A Munn was advised by Okanogan County
7 Sheriff's Detective Behymer that on January 26, 2006, the Okanogan County
8 Sheriff's Office served a search warrant on BROWN's residence located at 62B
9 North Kirkpatrick Road in Omak, WA. During that search warrant deputies
10 seized, among other things a desktop computer, computer disks and various
11 computer parts from BROWN's bedroom. The search of the home conducted by
12 the Okanogan County Sheriff's Deputies was primarily limited to the bedroom
13 being occupied by BROWN.

14 On May 1, 2006 S/A Munn was contacted by ICE forensic examiner S/A
15 Swenson regarding evidence found during the initial examination of that
16 computer. S/A Swenson told S/A Munn that he had found two (2) video clips and
17 between three hundred (300) to four hundred (400) images containing what
18 appeared to be child pornography. Those images and video clips contained visual
19 depictions of minors engaging in sexually explicit conduct including oral sexual
20 intercourse and the lascivious exhibition of the genitals of said minor(s). Many of
21 those images contained what appeared to be a known female, under the age of
22 twelve, here after referred to as "Victim A".

23 On that same date, based on the above information, S/A Munn went to
24 BROWN's residence located at 62B North Kirkpatrick Road in Omak, WA. At
25 that time, S/A Munn placed BROWN under arrest and subsequently transported
26 him to the Okanogan County Sheriff's Office. While helping BROWN put on his
27 tennis shoes inside his home, S/A Munn noticed that BROWN had installed a new
28

1 computer in his bedroom where the previous computer had been seized by
2 Sheriff's deputies in January of 2006.

3 On the evening of May 1, 2006, at approximately 5:20 p.m., S/A Munn and
4 Detective Behymer conducted an interview with BROWN. Prior to asking any
5 questions, S/A Munn read BROWN his Miranda rights and asked if he was willing
6 to answer questions regarding the evidence found on his computer. BROWN
7 advised that he understood his rights and agreed to answer questions. During that
8 interview, BROWN stated that beginning in 2003, he and "Victim A" engaged in
9 sexual conduct, which he recorded in photos and videos. BROWN further stated
10 that those photos and videos were stored on his computer and transmitted via the
11 internet to other individuals.

12 BROWN also advised that he has recorded photos and videos of other
13 alleged victims in addition to "Victim A". BROWN admitted to S/A Munn and
14 Detective Behymer that there were more than four other victims which BROWN
15 has photographed. BROWN told S/A Munn and Detective Behymer that videos
16 and/or photos of child pornography produced by BROWN were taken with
17 BROWN's digital camera, a "webcam" connected to his personal computer and a
18 "spy camera" installed in a clock radio. Additionally, BROWN advised Detective
19 Behymer and S/A Munn that he had, on occasion, used other computers (besides
20 that which was seized by Sheriff's Deputies in January of 2006) located at the
21 same residence to produce, record and transfer images of child pornography
22 including those of "Victim A".

23 On May 2, 2006, a federal search warrant was executed at Defendant's
24 residence. A number of computers were seized. According to the forensic
25 examiner the Defendant was in possession of over 300 but less than 600 images of
26 child pornography. Furthermore, the forensic examiner would testify that the
27 images had been transported in interstate commerce via a computer.

28 6. The United States Agrees:

Plea Agreement- 5

P70508JM.SLA.wpd

1 At the time of sentencing, the United States agrees to move to dismiss
2 Counts 1, 2 and 4 of the Indictment, which charge the Defendant with Production
3 of Child Pornography, in violation of 18 U.S.C. § 2251(a)(1), and Possession of
4 Child Pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B). The United
5 States also agrees to dismiss Count 5 of the Indictment, Forfeiture, as provided in
6 paragraph 13 of this Plea Agreement.

7 7. United States Sentencing Guideline Calculations:

8 The Defendant understands and acknowledges that the United States
9 Sentencing Guidelines (hereinafter “U.S.S.G.”) are applicable to this case and that
10 the Court will determine the Defendant’s applicable sentencing guideline range at
11 the time of sentencing.

12 (a.) Base Offense Level:

13 The United States and the Defendant agree that the base offense level for
14 Transportation of Child Pornography is 22. See U.S.S.G. §2G2.2(b)(2).

15 (b.) Specific Offense Characteristics:

16 The United States and the Defendant also agree and stipulate that the base
17 offense is increased by an additional two (2) levels because the offense involved a
18 minor who had not attained the age of 12 years. See U.S.S.G. § 2G2.1(b)(2).

19 The United States and the Defendant also agree and stipulate that the base
20 offense is increased by an additional two (2) levels because the offense involved
21 distribution other than distribution described in subdivision (A) through (E). See
22 U.S.S.G. § 2G2.2(b)(3)(F).

23 The United States and the Defendant also agree and stipulate that the base
24 offense is increased by an additional five (5) levels because the Defendant
25 engaged in a pattern of activity involving the sexual abuse or exploitation of a
26 minor. See U.S.S.G. § 2G2.2(b)(5).

1 The United States and the Defendant also agree and stipulate that the base
2 offense is increased by an additional two (2) levels because the offense involved
3 the use of a computer. See U.S.S.G. § 2G2.1(b)(6).

4 The United States and the Defendant also agree and stipulate that the base
5 offense is increased by an additional four (4) levels because the offense involved
6 at least 300 but fewer than 600 images. See U.S.S.G. § 2G2.2(b)(7)©.

7 (c.) Acceptance of Responsibility:

8 If the Defendant pleads guilty and demonstrates a recognition and an
9 affirmative acceptance of personal responsibility for the criminal conduct;
10 provides complete and accurate information during the sentencing process; does
11 not commit any obstructive conduct; accepts this Plea Agreement; and enters a
12 plea of guilty no later than June 7, 2007, the United States will move for a three
13 (3) level downward adjustment in the offense level for the Defendant's timely
14 acceptance of responsibility, pursuant to U.S.S.G. §3E1.1(a) and (b).

15 The Defendant and the United States agree that the United States may at its
16 option and upon written notice to the Defendant, not recommend a three (3) level
17 downward reduction for acceptance of responsibility if, prior to the imposition of
18 sentence, the Defendant is charged or convicted of any criminal offense
19 whatsoever or if the Defendant tests positive for any controlled substance.

20 Furthermore, the Defendant agrees to pay the \$100 mandatory special
21 penalty assessment to the Clerk of Court for the Eastern District of Washington, at
22 or before sentencing, and shall provide a receipt from the Clerk to the United
23 States before sentencing as proof of this payment, as a condition to this
24 recommendation by the United States.

25 Therefore, the United States and the Defendant agree that the Defendant's
26 final adjusted offense level would be 34.

(d.) Criminal History:

The United States and the Defendant understand that the Defendant's criminal history computation is tentative and that ultimately the Defendant's criminal history category will be determined by the Court after review of the Presentence Investigative Report. The United States and the Defendant have made no agreement and make no representations as to the criminal history category, which shall be determined after the Presentence Investigative Report is completed.

8. Incarceration:

Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the Defendant and the United States agree that the Defendant be sentenced to 20 years, to be followed by a life term of supervised release. The parties have agreed to make this recommendation based upon the Defendant's cooperation in providing information relating to his production of child pornography and the Government's agreement to dismiss counts 2-5 of the Indictment. If the Court does not accept the plea or chooses to sentence the Defendant to a greater or lesser sentence than the United States and the Defendant have agreed upon, the Defendant and the United States each may withdraw from the plea and this agreement is null and void.

9. Criminal Fine:

The United States and the Defendant are free to make whatever recommendation concerning the imposition of a criminal fine that they believe is appropriate.

10. Supervised Release:

The United States and the Defendant agree to recommend that the Court impose a life year term of supervised release to include the following special conditions, in addition to the standard conditions of supervised release:

(1) that the Defendant not have any contact with the victim(s);

(2) that the Defendant not have contact with any child under the age of 18, without the presence of an adult and approved in advance by the Probation

1 Officer, this includes prohibiting the Defendant from having any contact with any
2 child by telephone or the internet. The Defendant shall immediately report any
3 unauthorized contact with minor-aged children to the Probation Officer;

4 (3) that the Defendant allow the Probation Officer or designee to conduct
5 random inspections, including retrieval and copying of data from any computer,
6 and any personal computing device that the Defendant possesses or has access to,
7 including any internal or external peripherals. This may require temporary
8 removal of the equipment for a more thorough inspection. The Defendant shall
9 not possess or use any data encryption technique or program. The Defendant shall
10 purchase and use such hardware and software systems that monitor the
11 Defendant's computer usage, if directed by the Probation Officer;

12 (4) that the Defendant shall not reside or loiter within 1000 feet of places
13 where children under the age of 18 congregate, which includes primary and
14 secondary schools, schoolyards, parks, playgrounds, shopping malls, daycare
15 centers, carnivals, recreation centers, and arcades;

16 (5) that the Defendant shall not possess or manufacture any sexually
17 stimulating, sexually explicit or sexually oriented material including videos,
18 magazines, photographs, computer generated depictions, or any other matter that
19 depicts "sexually explicit conduct" involving children or adults, as defined by 18
20 U.S.C. § 2256(2). The Defendant shall not enter or be present at any
21 establishment involved in the sex industry, including adult book stores, message
22 parlors, escort services, and strip bars. The Defendant shall not use any sex-
23 related adult telephone number. The Defendant shall provide all his telephone
24 records to monitor compliance, at the direction of the Probation Officer;

25 (6) that the Defendant register as a sex offender, according to the laws of
26 each state in which the Defendant resides, is employed, or is attending school.
27 The Defendant shall provide verification of compliance with this requirement to
28 the Probation Officer;

(7) that the Defendant complete a sex offender evaluation, which may include periodic psychological, physiological, polygraph, plethysmography testing, and completion of the ABEL assessment, at the direction of the Probation Officer;

(8) that the Defendant participate and successfully complete an approved state-certified sex offender treatment program, including compliance with all lifestyle restrictions and treatment requirements of the program. The Defendant shall allow reciprocal release of information between the Probation Officer and the treatment provider. The Defendant shall contribute to the cost of treatment according to the Defendant's ability.

11. Mandatory Special Penalty Assessment:

The Defendant agrees to pay the \$100 mandatory special penalty assessment to the Clerk of Court for the Eastern District of Washington, at or before sentencing, pursuant to 18 U.S.C. § 3013 and shall provide a receipt from the Clerk to the United States before sentencing as proof of this payment.

12. Payments While Incarcerated:

If the Defendant lacks the financial resources to pay the monetary obligations imposed by the Court, the Defendant agrees to earn the money to pay toward these obligations by participating in the Bureau of Prisons' Inmate Financial Responsibility Program.

13. Forfeiture:

The United States agrees to dismiss Count 5, Forfeiture, because the property has been abandoned, administratively forfeited, or is contraband.

14. Additional Violations of Law Can Void Plea Agreement:

The Defendant and the United States agree that the United States may at its option and upon written notice to the Defendant, withdraw from this Plea Agreement or modify its recommendation for sentence if, prior to the imposition

1 of sentence, the Defendant is charged or convicted of any criminal offense
2 whatsoever or if the Defendant tests positive for any controlled substance.

3 15. Appeal Rights:

4 Defendant understands that he has a limited right to appeal or challenge the
5 conviction and sentence imposed by the Court. Defendant hereby expressly
6 waives his right to appeal his conviction and the sentence the Court imposes,
7 including any restitution order. Defendant further expressly waives his right to
8 file any post-conviction motion attacking his conviction and sentence, including a
9 motion pursuant to 28 U.S.C. § 2255, except one based upon ineffective assistance
10 of counsel based on information not now known by Defendant and which, in the
11 exercise of due diligence, could not be known by Defendant by the time the Court
12 imposes the sentence.

13 16. Integration Clause:

14 The United States and the Defendant acknowledge that this document
15 constitutes the entire Plea Agreement between the United States and the
16 Defendant, and no other promises, agreements, or conditions exist between the
17 United States and the Defendant concerning the resolution of the case. This Plea
18 Agreement is binding only upon the United States Attorney's Office for the
19 Eastern District of Washington, and cannot bind other federal, state or local
20 authorities. The United States and the Defendant agree that this agreement cannot
21 be modified except in a writing that is signed by the United States and the
22 Defendant.

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Approvals and Signatures

Agreed and submitted on behalf of the United States Attorney's Office for the Eastern District of Washington.

James A. McDevitt
United States Attorney

Stephanie J. Lister
Assistant U.S. Attorney

Date

6/7/07

I have read this Plea Agreement and have carefully reviewed and discussed every part of the agreement with my attorney. I understand and voluntarily enter into this Plea Agreement. Furthermore, I have consulted with my attorney about my rights, I understand those rights, and I am satisfied with the representation of my attorney in this case. No other promises or inducements have been made to me, other than those contained in this Plea Agreement and no one has threatened or forced me in any way to enter into this Plea Agreement. I am agreeing to plead guilty because I am guilty.

SCOTT DEAN BROWN
Defendant

6-7-07

Date

I have read the Plea Agreement and have discussed the contents of the agreement with my client. The Plea Agreement accurately and completely sets forth the entirety of the agreement between the parties. I concur in my client's decision to plead guilty as set forth in the Plea Agreement. There is no legal reason why the Court should not accept the Defendant's plea of guilty.

Bevan Maxey
Attorney for the Defendant

Date _____

Plea Agreement- 12

P70508IM SLA.wpd